IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 131 oF 2005

IN

SUIT NO. 113 OF 2005

Purna C. Shah .. Plaintiff

versus

Pankaj C. Shah & ors. .. Defendants

...

Mr.H. Toor i/b ALN Khatri for the plaintiff.

Ms.Alpana Ghone i/b DSK Legal for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 2nd March 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. It is admitted by the learned counsel that the deceased Chandrakant Shah died without leaving behind him a will. According to the plaintiff, all properties mentioned in the schedule belonged to the deceased while according to the defendant, property

at Sr.No. I(b) belongs to the defendant no.3 and some of the investments are made by defendant no.3 and belong to her. However, no affidavit in reply has been filed and there is no prima facie material on record to show that any of the said properties belonged to the defendant no.3. All the properties stand either in the sole name of the Chandrakant Shah or his name appears first jointly with others. In the circumstances, prima facie I am satisfied that the deceased Chandrakant Shah was the owner of the properties and the plaintiff would have 1/4th share therein. As such, in my view, it would be appropriate to grant injunction restraining the defendants from alienating or otherwise dealing with 1/4th share in the properties mentioned in the schedule.

3. So far as the business is concerned, the business belonged to Chandrakant Shah and the same is presently conducted by defendant no.1. It would therefore be appropriate to appoint receiver in respect of the business with a condition that the defendant no.1 shall be appointed as an agent of the receiver without payment of any security or royalty until further orders. Issue of security and royalty

would be considered at the time of the hearing of the motion. Hence, I pass the following order:-

4. The defendants are restrained by an ad-interim injunction from transferring 1/4th share in any of the properties mentioned in the schedule. Court receiver is appointed as the receiver in respect of the business mentioned in prayer clause (b) of the motion with a condition that receiver shall appoint the defendant no.1 and its agent. The defendant no.1 shall not be dispossessed if he executes an agreement with the receiver within a period of four weeks. If the defendant no.1 fails to execute the agreement, receiver shall be entitled to take possession of the business. It would not be necessary for the defendant no.1 to furnish any security or pay any royalty for the time being until further orders. Motion is made returnable in due course.

D.G. KARNIK,J